

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
December 11, 2012**

1. Present

Commissioners:

Bill Taylor, Chair
Curtis Seebeck, Vice Chair
Chris Wood
Kenneth Ehlers
Travis Kelsey
Corey Carothers

City Staff:

Matthew Lewis, Development Services Director
Kristy Stark, Development Services Assistant Director
Roxanne Nemcik, Assistant City Attorney
Francis Serna, Recording Secretary
Amanda Hernandez, Sr. Planner
Emily Koller, Planner
Will Parrish, Planning Tech

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Taylor at 6:00 p.m. on Tuesday December 11, 2012, in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Taylor welcomed the audience and viewers.

4. NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

5. 30 Minute Citizen Comment Period

Consent Agenda:

6. Consider the approval of the minutes from the Regular Meeting on November 27, 2012.

7. PC-12-28(04) (Parkway Falls Apartments) and Associated Subdivision Improvement Agreement. Consider a request by F.M. Forrest, Inc., on behalf of San Marcos SHK, Ltd., for approval of a Final Plat for approximately 10.05 acres, more or less, out of the J.M. Veramendi Survey No.1, located at the intersection of Leah Drive and Medical Parkway, as well as the Subdivision Improvement Agreement related to the Del Sol Drive extension.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Ehlers, the Commission voted all in favor to approve the consent agenda. The motion carried unanimously.

Public Hearings:

8. CUP-12-41 (Black Rabbit Saloon) Hold a public hearing and consider a request by FSW Ventures, on behalf of Black Rabbit Saloon, for renewal of an existing Unrestricted Conditional Use Permit to allow the continued sale of mixed beverages for on-premise consumption at 127 E. Hopkins.

Amanda Hernandez, Sr. Planner, gave an overview of the project.

Chair Taylor opened the public hearing. Brian Scofield, President of FSW Ventures, on behalf of Black Rabbit Saloon said he was available to answer questions. He asked the Commission for their support. There were no additional citizen comments and the public hearing was closed. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Kelsey, the Commission voted all in favor to approve CUP-12-41 with the conditions that the permit shall be valid for three (3) years, provided standards are met, subject to the point system.

9. CUP-12-42 (Zelicks) Hold a public hearing and consider a request by Seth Katz, on behalf of Zelicks Inc., for renewal of an existing Conditional Use Permit to allow the continued sale of mixed beverages for on-premise consumption at 336 W. Hopkins.

Emily Koller, Staff Planner, gave an overview of the project.

Chair Taylor opened the public hearing. Barry James, owner of 323 W. Hopkins said he purchased the building in 1985 and spent all of 1986 renovating the building. He pointed out that he has a heavy investment as well. Mr. James explained that they try to call Seth and when they do not get an answer they call the police. Mr. James provided the Commission with certified sound engineer calibrated sound recording of Zelicks from the next door property. He pointed out that 75 decibels is very noisy. Mr. James stated that the original temporary CUP specified no live bands. He felt that the original agreement is not being followed because they have had live bands at Zelicks. He asked how the agreement and the 75 decibel limit are going to be enforced. Mr. James further explained that when Zelicks had a live band, he called the Police Department and they took care of the problem but a report is not written. Mr. James felt that the problem is not addressed because reports are not written to identify the calls made to the Police Department.

Jane Hughson, 1600 N. LBJ Drive, thanked the Commission for their time and service. She said it is wonderful that the Dillon's bought and restored the Inn many years ago. In addition, many were pleased that the Katz' brothers took the service station and rehabbed the building into a new use. Ms. Hughson said it would be great if both businesses can continue to profit. She pointed out item #2 of the agreement and asked if motorcycles would be required to move after 11:00 p.m. She expressed her concerns regarding a 3 year permit being considered. She suggested a term less than 3 years preferably 1 year and should everything work out, then a 3 year can be requested next December.

Seth Katz, 336 W. Hopkins explained that the Board gave them 2 six month renewals to take action and to come to an agreement which they have done. He stated that promptly following the last six month renewal, they had begun mitigating the issues to an agreement with the Dillon's. Mr. Katz pointed out that they immediately moved their fence expanded the back yard area and encouraged patrons to socialize and play games furthest away from the Crystal River Inn. In addition he stated they agreed to pay for the installation of sound proofing material and repairs of three rooms alongside the property line of the Crystal River. Mr. Katz mentioned that they have installed signs in the parking lot asking motorcycles to park away from the Crystal River Inn fence line. He explained that they used David Sergi as both they and The Crystal River Inn used Mr. Curry as their mediator. In addition, they met with the city to achieve designated parking on North Street. Mr. Katz stated they have addressed the issues.

Brenda Smith, 323 W. Hopkins said she wanted to make it clear that not only are the Dillon's being affected by Zelicks. She explained that they do not have a buffer between them and Zelicks and the noise travels across the street. She pointed out that they are also affected by the noise. Ms. Smith stated that the settlement agreement does not address all issues. Their biggest concern is the loud music. She suggested that item 3 be clarified to read Saturday and Sunday morning instead of Friday and Saturday. Ms. Smith requested that the Katz not be allowed additional outdoor seating, activities, additional construction, renovations or modifications, and limit the decibel level to 60. She felt that the Commission should make the conditions very specific. Ms. Smith read part of the 2010 Staff Report and noted the screening and buffering conditions have not been met and continues to be an issue. She suggested the approval for one year to see if the Katz' can be good neighbors.

Kathy Dillon, 1000 Burleson Street stated she was present on behalf of herself and her husband after a long effort to support the Katz's in their quest to get their three year CUP renewal. She said she feels blessed because Zelicks has become a favorite place for her guests. Ms. Dillon stated they are trying to tweak the issues after 12 a.m. is when the issues come up. She added that the sound recordings are explicit. Ms. Dillon felt that the spike of sound from the motorcycles will be mitigated by the building. She pointed out that with the games being moved and the sound being lowered things should be ok. She thanked the Commission for caring for both businesses. She told the Commission to be aware when future similar request are submitted. She explained with 19 sleeping spaces and 12 hotel rooms next to a bar noise is really important. She added if they could turn the music down it would be great. Ms. Dillon said she hopes that no live music will ever be an issue.

Chase Katz, 336 W. Hopkins said he was happy that they came to an agreement. He pointed out that through the internet 60 decibels is a conversation in a restaurant, office background music and an air conditioning unit. He added it is important for the Commission to know what the decibel level means. Mr. Katz pointed out that he knows the folks across the street have issues and they have given them their phone numbers, but they have not been contacted. He added that if they would have been contacted he would have addressed the issues.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Ehlers and a second by Commissioner Kelsey, the Commission voted six (6) for and zero (0) against to approve CUP-12-42 with the conditions that the permit shall be valid for three (3) years, provided standards are met, subject to the point system; and subject to terms 2, 3, 4, 5 as stated in the November 21, 2012 Settlement Agreement; 2-Upon striping and designation of motorcycle parking on North Street, the applicant shall not permit motorcycle parking in front of the facility on Hopkins Street or in the parking lot of the facility, between the hours of 11:00 p.m. and 3:00 a.m.; 3-The applicant shall shut down the portion of its outdoor games on the half of Zelicks' property adjacent to the Crystal River Inn, at 12:00 a.m. on Friday and Saturday nights, but may keep games open on the half of Zelicks property adjacent on North Street; 4-The applicant shall constantly monitor the level of amplified or stereo music at all times in respect for the Crystal River Inn and to shut down all amplified or stereo music at 2:00 a.m.; 5-The applicant shall not operate any sounds equipment that produces sound in excess of 75 decibels for a period exceeding one minute between the hours of 11:00 p.m. and 3:00 a.m. as measured from within the property line of the Crystal River Inn; and 6. No live outdoor amplified music shall be allowed after 11:00 p.m. The motion carried unanimously.

10. LDC-12-14 (SmartCode Revisions) Hold a public hearing and consider revisions to Subpart B, the San Marcos SmartCode Articles 1, 3, 5 and 8 to make minor corrections and clarifications, add an option for fee-in-lieu of tree mitigation and add definitions for Downtown San Marcos and Downtown Tree Fund.

John Foreman, Planning Manager gave an overview of the SmartCode Revisions.

Chair Taylor opened the public hearing.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Kelsey and a second by Commissioner Ehlers, the Commission voted five (5) in favor and one (1) opposed to approve the revision to Subpart B, the San

Marcos SmartCode Article 1, 3, 5 and 8 to make minor corrections and clarifications, add an option for fee-in-lieu of tree mitigation and add definitions for Downtown San Marcos and Downtown Tree Fund. The motion carried. Commissioner Seebeck dissented.

Non-Consent Agenda

11. Development Services Report

- a. Update from staff on Comprehensive Plan

Matthew Lewis announced the last Comprehensive Plan meeting before the holidays will be Wednesday, December 12. The subcommittees will be finalizing the plan objectives.

12. Question and Answer Session with Press and Public. *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*

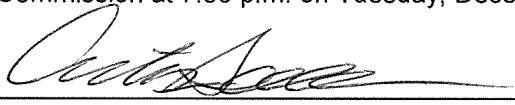
There were no questions from the press and public.

13. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission at 7:35 p.m. on Tuesday, December 11, 2012.



Bill Taylor, Chair



Curtis Seebeck, Vice Chair



Chris Wood, Commissioner



Kenneth Ehlers, Commissioner



Corey Carothers, Commissioner



Travis Kelsey

ATTEST:



Francis Serna, Recording Secretary